

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

THEODORE MORAWSKI, as Next Friend §
for A. M. (a minor), and OTHERS §
SIMILARLY SITUATED §

Plaintiffs, §

v. §

Civil Action No. 2:13-cv-00102-JRG

FARMERS TEXAS COUNTY MUTUAL §
INSURANCE COMPANY, MID-CENTURY §
INSURANCE COMPANY; MID-CENTURY §
INSURANCE COMPANY OF TEXAS; 21st §
CENTURY NORTH AMERICA §
INSURANCE COMPANY; 21st CENTURY §
PREFERRED INSURANCE COMPANY; §
21st CENTURY CENTENNIAL §
INSURANCE COMPANY; 21st CENTURY §
INSURANCE COMPANY OF THE §
SOUTHWEST, §

Defendants.

ORDER

The Court issued a Memorandum Opinion and Order on March 11, 2014 (Dkt. No. 50), wherein the Court granted Defendants' Motion to Dismiss Directed at Plaintiffs' Second Amended Complaint, on the ground of *res judicata*. By the March 11, 2014 Order, the Court dismissed with prejudice Plaintiff Theodore Morawski's individual claims against Defendants. The Court further dismissed without prejudice the complaint filed on behalf of others similarly situated. (See Dkt. No. 50 at 14.)


On the same day of this Court's Order, Plaintiffs filed a Third Amended Complaint against

Defendants (Dkt. No. 49), accompanied by a Motion for Leave to File Third Amended Complaint (Dkt. No. 48.) Plaintiffs sought to amend the complaint to (1) add certain new Defendants, and (2) add a new class Plaintiff – Rodney Beasley. (*See* Dkt. No. 48 at 1.) However, on March 31, 2014, before this Court rules on Plaintiffs’ Motion for Leave to File Third Amended Complaint, Mr. Beasley filed a Notice of Voluntary Dismissal of his claims against all Defendants under F.R.C.P. 41(a)(1)(A). (Dkt. No. 56).

By dismissing with prejudice Mr. Morawski’s – the only class representative – individual claims against Defendants, and dismissing the complaint filed on behalf others similarly situated without prejudice, the Court’s March 11, 2014 Order has effectively dismissed all claims asserted in Plaintiffs’ Second Amended Complaint. Mr. Beasley, whom Plaintiffs have attempted to add as a new class representative in the Third Amended Complaint, is the only potential plaintiff left in this case with a live claim. However, by the Notice of Voluntary Dismissal, Mr. Beasley has made it clear that he is no longer pursuing his claims against Defendants in this case. As such, Plaintiffs’ Motion for Leave to File Third Amended Complaint (Dkt. No. 48) should be and it is **DENIED AS MOOT**, on the ground that Plaintiffs no longer seek to add Mr. Beasley as the new class plaintiff and, without a class representative, it is futile to add new Defendants in this case. Accordingly, Plaintiffs’ Third Amended Complaint (Dkt. No. 49) is hereby **STRICKEN** from the record.

The Court reiterates its previous Order that Plaintiff Theodore Morawski’s individual claims against Defendants are **DISMISSED WITH PREJUDICE**. (*See* Dkt. No. 50.) The complaint on behalf of others similarly situated is **DISMISSED WITHOUT PREJUDICE**. (*See id.*) With no live issues left in the case, the Clerk of the Court is **DIRECTED** to close the above-styled case.

So ORDERED and SIGNED this 2nd day of April, 2014.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE